

National Human Rights Commission

Diary

No : 40856/CR/2021 is attached with Case / File No : 152/9/1/2020

Main Case / File No : 152/9/1/2020

Linked Diary No : 40856/CR/2021

Diary No	70008/CR/2020	Case / File No	152/9/1/2020
Victim Name	RAJINDER PREMI AND FAMILY	Registration Date	26/08/2020

Action List (Click on Action given in blue color to view details)

Action No.	Action	Authority	Action Date
5	Additional Information Called for	THE CHIEF SECRETARY GOVERNMENT OF UT OF JAMMU AND KASHMIR, R. NO. 2/7, 2ND, FLOOR MAIN BUILDING, CIVIL SECRETARIAT, JAMMU	16/03/2021
4	Comments of Complainant Called for		03/02/2021
3	Conditional Summon	THE CHIEF SECRETARY R. No. 307, 3rd Floor, Civil Secretariat, Srinagar 190001	21/12/2020
2	Additional Information Called for	THE CHIEF SECRETARY R. No. 307, 3rd Floor, Civil Secretariat, Srinagar - 190001	16/10/2020
1	Notice Issued	THE CHIEF SECRETARY R. No. 307, 3rd Floor, Civil Secretariat, Srinagar - 190001	30/08/2020

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Action

Action : Additional Information Called for(Action No 5)

Action Date	16/03/2021
Authority	THE CHIEF SECRETARY, GOVERNMENT OF UT OF JAMMU AND KASHMIR, R. NO. 2/7, 2ND, FLOOR MAIN BUILDING, CIVIL SECRETARIAT, JAMMU
Proceeding	<p>The instant complaint dated 15-7-2020, is regarding Government apathy to the plight of terrorism affected family of erstwhile State of Jammu and Kashmir.</p> <p>The Commission has taken cognizance of the complaint on 30.8.2020 wherein notice has been issued to the Chief Secretary, Union Territory of Jammu & Kashmir calling for report within four weeks.</p>

The matter was placed before the Commission on 21.12.2020 wherein after observing that the Chief Secretary, Union Territory of Jammu & Kashmir has not submitted any report till date, the Commission directed as under :

“Registry is directed to issue summons to the Chief Secretary, Union Territory of Jammu & Kashmir, u/s 13 of the Protection of Human Rights Act, 1993 to appear before the Commission on 29.1.2021 along with requisite report.

Should however the requisite report be received by the Commission on or before 22.1.2021, the personal appearance of the concerned authorities shall stand dispensed with.”

Pursuant to the directions of the Commission, vide a letter dated 21.1.2021 Addl. Secy to the Govt. submitted a report which was considered by the Commission on 3.2.2021 wherein it was directed to transmit the said report to the Complainant calling for his comments on the same within four weeks failing which the matter will be decided on basis of documents on merits.

Pursuant to directions of the Commission, vide a response dated 1.3.2021, the complainant has submitted his comments stating therein that the report of the Addl. Secretary, J&K Govt. has not dealt with the core issue regarding action taken or proposed to be taken on the recommendations of the Division Bench of J&K SHRC which is basically the grievance of the complainant. The report, instead of deliberating on the issues, is more focused on functioning and working of NHRC including questioning the very order of the NHRC in the instant case directing the authorities concerned to implement the recommendations of SHRC. The plea that if NHRC started monitoring the status of implementation of SHRC then this would increase the work load of NHRC. It is further stated that UT J&K cannot advise or instigate the aggrieved complainant to avail legal remedies for implementations of the recommendations of the SHRC or against its recommendations by way of a Writ Petition before Hon’ble High Court of J&K rather than before NHRC. The complainant has stated that UT Administration have even failed to translate into action their own Govt decision taken in various high level meetings pertaining to the instant case which is itself an ample proof of callousness/irresponsible/apathetic attitude and insensitivity towards the complainant’s family. The UT Administration cannot absolve itself from discharging its legitimate duty by not translating into action the recommendation of the DB decision of J&K SHRC dated 22.2.2012 and the decision taken by the State Govt. in various high level meetings. The complainant further states that the norms of relief extended to his family cannot be said to be categorized as exceptionally favourable to them as it is a matter of ex-gratia compensation, job/employment, allotment of TRT in lieu of ORT. The copies of Urdu version of Bhagwad Gita were purchased through proper channel only by the Directorate of Libraries after following all formalities. However, no books were procured by the orders of SHRC. The allotment of plot by the JDA has not been expedited so far although this case is well covered by the prevalent rules of allotment in two categories namely 4% reserved for terrorists victim family and 2% for State awardees and the

case is being lingered by the JDA. It is also stated that J&K Govt. had withdrawn that too within 18 hours, the circular issued by the Education department dated 22.10.2018 wherein the Directors of the Education Department, Jammu and Srinagar were asked to consider the purchase of two posthumous publications of his late illustrious father, Govt. has even failed to issue the proceeding/record notes of two meetings held on 14.1.2017 under the chairmanship of Financial Commissioner/Relief Rehabilitation, Reconstruction of Disaster Management and that of one which was convened by the Chief Secretary on 10.10.2018. The complainant has prayed that the instant report of the State Govt. has rubbed up salt on their inflicted wounds failing to realize that no one can bring back the martyrs of his family and nothing is enough to compensate the human loss of his family. With this submission, the Complainant has made a prayer for an order to the State Government for expediting the implementations of the recommendations of the DB decision of J& K SHRC dated 22.2.2012.

The Commission has considered the matter on record as well as the comments of the complainant.

The Commission observes that the Additional Secretary, Home Department, Govt of J&K vide report dated 21.1.2021 has asserted that that upon enforcement of the J&K Reorganization Act, 2019 w.e.f. 31.10.2019, the J&K Protection of Human Rights Act 1997 stands repealed and replaced by the Protection of Human Rights Act, 1993. By its implication, the legal bar contained in proviso to sub section (2) of section 1 of the Central Act stands omitted. Consequently, in view of which this Hon'ble Commission has jurisdiction to entertain any matter regarding alleged human rights violation relating to or after 31.10.2019 i.e. the appointed date. This has also been taken note of by this Hon'ble Commission in its proceedings dated 30.8.2020, wherein it has been made clear that the Protection of Human Rights Act, 1993 applied to the erstwhile State of J&K, only in respect of the matters relating to any of the entries enumerated in List I or List III in the 7th Schedule to the Constitution, as applicable to the erstwhile State of J&K. As the subject matter of the instant complaint, as such, being relating to the law and order situation during 90s and hence falling within the ambit of List II, Entry I in the 7th Schedule to the Constitution was excluded from the jurisdiction of this Commission.

It is further stated that the complainant had on earlier occasion during the year 2008 approached the Commission alleging violation of his human rights which was transferred to J&K SHRC for its disposal under the law. Notwithstanding the pendency of his complaint before this Commission, he had simultaneously by means of a separate complaint raising similar issue to the J&K SHRC so the complainant had not approached NHRC with clean hands. The SHRC clubbed both the complaints and vide its order dated 22.2.2012 made a recommendation to the Govt. As per sec. 95(5) of the J&K Protection of Human Rights Act 1997 (now repealed) the Govt. authority to whom such enquiry report together its recommendation are sent by SHRC, had to forward its comments, including the action taken or proposed to be

taken thereon to the Commission within a period of one month from the date of forwarding of such recommendations. There is no provision in the Protection of Human Rights Act, 1993 conferring power on the NHRC to either monitor or issue directions for implementation of the recommendations made under the PHR Act 1997 in respect of matters which have been duly considered by the J&K SHRC and disposed of prior to the enforcement of J&K Reorganization Act 2019. The report goes on to say that if the complaints agitated and settled by J&K SHRC will be entertained by the NHRC for monitoring the status of implementation of the recommendations of SHRC, this would not only lead to increase of workload in the Commission but would also result in avoidable difficulties for the administration of UT of J&K which is already grappling with number of issues including those on security front. The party/(ies) can avail legal remedies for implementation of the recommendation of the J&K SHRC or against its recommendations by way of a Writ Petition before the Hon'ble High Court of J&K High Court but not the NHRC.

With these objections, it is further stated that UT administration is conscious of its responsibilities and has accordingly taken various steps in furtherance of recommendations made by SHRC which inter alia include Allotment of two room tenement at Jagri Nagrota in 2017 in favour of NoK of the victim, purchase of manuscripts of "Bhagwat Gita", ex-gratia paid to the family of the victim, besides employment to two family members of the victim. Apart from this the inputs on each of the recommendations of SHRC obtained from the field agencies will be placed alongwith other cases, before the above referred Committee for its consideration.

The report has been taken on record and the Commission finds that the preliminary objections raised by the State authorities that the Commission is having no jurisdiction to entertain complaint in the instant case as the same is relatable to the law and order situation during 90s and hence falling within the ambit of List II, Entry I in the 7th Schedule to the Constitution which debar the jurisdiction of this Commission, is not tenable as failure on part of the State Govt./UT Administration to implement the decision of SHRC is still continuing. So the cause of action for filing the complaint before this Commission arises due to the continuing wrong violating the right to life and dignity of the complainant. The objection that the complainant had filed simultaneously the complaint before this Commission as well as J&K SHRC and thus had not approached the Commission with clean hands had no locus standi as even the complaint which was filed before this Commission was disposed of by transferring the same to the J&K SHRC for its disposal as per law. Such a plea would have been accepted if simultaneously both the Commissions were entertaining his complaint and were issuing directions to the authorities on similar issues which is not the case in the instant complaint. Regarding the plea that for implementing the recommendations of the SHRC, one has to approach High Court by way of Writ Petition and not to this Commission, it is stated that the same has been raised without any legal basis as there is no such bar under any of the provision of the PHR Act 1993 which supports the contention of the State Govt. Rule 9 of the NHRC

(Procedure) Regulations, 1994 has clearly laid down the conditions wherein complaints before the Commission are not ordinarily entertainable and the instant complaint does not fall into any of the criteria to dismiss it in limini.

The Commission observes with the pain that the instant reply from the State Government is not in good taste as instead of addressing the grievances of the complainant for implementing in toto the reasonable/sensible recommendation of the J&K SHRC, the reply of the state authorities are raising various preliminary objections challenging the very authority of this Commission. From the report, it is apparent that despite lapse of considerable time it is still being averred that inputs on each of the recommendations of the SHRC obtained from the field agencies will be placed, along with other cases before the above referred Committee for its consideration without even stating which Committee they are referring to. The Commission don't want to make any remarks on the claims that the State Administration has made as the same can be adjudged from the comments dated 1.3.2021 of the complainant.

The Commission feels that it is imperative on part it to bring into notice of the State Administration, that while interpreting the provisions of the Protection of Human Rights Act, 1993, in remarkable judgment delivered by the Full Bench of Madras High Court in W.P. No. 41791 of 2006 titled as Abdul Sathar Vs the Principal Secretary to Government, Home Department, Govt. of Tamil Nadu and Ors , recently on 5.2.2021, it was made it clear on issues that

a) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?, the Court has held that –

“The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the H.R. Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has

expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act”.

b) Likewise on issue that – Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances? , it was held by the Full Bench that –

“Answer to this issue is in the affirmative in respect of the first point of Reference, the same holds good for this point of Reference as well. We having held that the recommendation is binding, the State has no discretion to avoid implementation of the recommendation and in case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

In view of aforesaid, which makes it amply clear that the direction of the Commission be it NHRC or even that of the State Commission is binding, the State has no discretion to avoid implementation of the recommendation and in case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

This decision is to read in light of contention of the State Govt. that for implementing that decision dated 22.2.2012 of the DB of J&K SHRC, the aggrieved complainant has to approach High Court by way of Writ Petition and not to this Commission.

Having observed so, the Commission directs the Chief Secretary, UT of J&K to take a rational and humanitarian approach for resolving the grievance of the complainant within 8 weeks and submit its report accordingly within the given time frame.

Complaint

Diary No	70008/CR/2020	Section	M-4
Language	ENGLISH	Mode	E-MAIL
Received Date	15/07/2020	Complaint Date	15/07/2020

Victim

Victim Name	RAJINDER PREMI AND FAMILY	Gender	Both
Religion	Unknown	Cast	Unknown
Address	E-172, SARITA VIHAR , NEW DELHI		
District	NEW DELHI	State	DELHI

Complainant

Complainant Details of Main Case			
Name	RAJINDER PREMI		
Address	E-172, SARITA VIHAR , NEW DELHI		
District	NEW DELHI	State	DELHI (110076)
Complainant Details of Linked Case			
Name	RAJINDER PREMI		
Address	E-172, SARITA VIHAR, NEW DELHI		
District	NEW DELHI	State	DELHI (110076)

Incident

Incident Place	DORU, ANANTNAG KASHMIR	Incident Date	NA
Incident Category	IN ACTION BY THE STATE GOVERNMENT/CENTRAL GOVT.OFFICIALS		
Incident District	ANANTNAG	Incident State	JAMMU & KASHMIR
Incident Details			